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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195669
Party	Defendant Sprinkles Cupcakes, Inc.
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Submission	Answer
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Date	08/01/2013
Attachments	Opposition 91195669 - Amended Answer.pdf(219344 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Soft Serve, Inc. d/b/a/ Sprinkles,	)	Opposition No. 91195669
	)	
Opposer,	)	
	)	<b>APPLICANT’S FIRST AMENDED</b>
v.	)	<b>ANSWER TO NOTICE OF OPPOSITION</b>
	)	
Sprinkles Cupcakes, LLC,	)	Ser. No. 77/770,532
	)	Mark: SPRINKLESMOBILE
Applicant.	)	Class: 35
	)	

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Sprinkles Cupcakes, LLC (“Applicant”), successor-in-interest to Sprinkles Cupcakes, Inc., through its undersigned attorneys, hereby submits this First Amended Answer to the Notice of Opposition filed by Soft Serve, Inc. d/b/a Sprinkles (“Opposer”) in the above-mentioned proceeding. Unless expressly admitted herein, each allegation contained in the Notice of Opposition is denied.

1. Applicant lacks information sufficient to admit or deny the allegations of Paragraph 1 of the Notice of Opposition, and therefore denies the allegations.
2. Applicant lacks information sufficient to admit or deny the allegations of Paragraph 2 of the Notice of Opposition, and therefore denies the allegations.
3. Applicant lacks information sufficient to admit or deny the allegations of Paragraph 3 of the Notice of Opposition, and therefore denies the allegations.
4. Applicant lacks information sufficient to admit or deny the allegations of Paragraph 4 of the Notice of Opposition, and therefore denies the allegations.
5. Applicant denies the allegations of Paragraph 5 of the Notice of Opposition.
6. Applicant denies the allegations of Paragraph 6 of the Notice of Opposition.
7. Applicant admits that it is the owner of the listed application. Applicant denies the remaining allegations of Paragraph 7 of the Notice of Opposition.
8. Applicant denies the allegations of Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations of Paragraph 9 of the Notice of Opposition.
10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition.
11. This paragraph was stricken by Board Order on March 4, 2011. To the extent any allegations in Paragraph 11 remain, Applicant denies the allegations of Paragraph 11 of the Notice of Opposition.
12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.

**First Affirmative Defense**

13. The Notice of Opposition fails to set forth facts sufficient to entitle Opposer to the relief sought.

**Second Affirmative Defense**

14. As between the parties, Applicant has superior rights to the SPRINKLES mark and variations thereof. *See, e.g.*, incontestable Reg. Nos. 2,938,800 and 3,004,757.

**Third Affirmative Defense**

15. This action is barred by the doctrine of unclean hands, by virtue of Opposer's efforts from 2009 to the present to encourage confusion in the minds of consumers. Such conduct includes emphasis of cupcake offerings in signage, point-of-sale displays, and advertising, mimicry of Applicant's social media promotions, and reference to "Sprinkles cupcakes" products in advertising.

Dated: August 1, 2013

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By: /s/ John L. Slafsky  
John L. Slafsky  
Hollis Beth Hire

Attorneys for Applicant  
SPRINKLES CUPCAKES, LLC

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**CERTIFICATE OF SERVICE BY MAIL**

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **APPLICANT'S FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Christopher Kelly  
Jennifer L. Elgin  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on August 1, 2013.

/s/ Elvira Minjarez  
Elvira Minjarez